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REPUBLICAN SATIRE IN THE DOCK: FORENSIC RHETORIC IN LUCILIUS

IAN GOH

The student of the Roman law court should not necessarily confine their research to the speeches which were delivered in this venue or to the orators who did the delivering. Law-court scenarios have a symbiotic relationship with Roman verse satire,¹ because the works in that poetic genre often style themselves as taking on the artifice and performative aspect of a lawsuit: employing partisan invective and seeking redress for private purposes but in a public environment. Satire also provides examples of an alternative historical record of oratory in action, which mirror more formal accounts and the fragmentary remains that are the subject of this volume. Most famously in this vein, Horace narrates a vivid picture of a trial on the Asian circuit in *Satire* 1.7, over which the Brutus who later assassinated Caesar presided, a poem which raucously culminates, as we shall see, in a deliberate raspberry of a bad joke about regicide.²

Throughout his *Satires* 1, Horace owes a certain debt to his predecessor in and supposed inventor (at least, according to Horace) of the genre, the *eques* Gaius Lucilius (c. 180–103/2 BC).³ Lucilius is invoked by name within the first few lines of *Satire* 1.4, and is the subject of 1.10, which goes over the same material. *Satire* 1.9 ends with an allusion to a Lucilian quotation of Homer,⁴ and has as its central character, the so-called Pest, an antagonist for the poet, who may be a representation of Lucilius.⁵ The denouement of this poem has an explicitly legal flavour, in that the Pest's opponent in a civil suit, after formally calling on Horace as a witness, hauls the Pest off to court, perhaps with Horace in tow.⁶ So the Lucilian legacy is conceivably, for Horace, bound up closely with the topic of legality. Even the first poem of Horace's *Satires* 2, which seems to be the only piece in the collection concerned with Lucilius, is a conversation with a jurist, Trebatius. In *Satire* 2.1, Horace—or his persona—gets the better of Trebatius in a quasi-legalistic argument about the political impact of satire,⁷ and the employment of the *topos*

¹ See e.g. Keane 2006: 73–104.

² 'Touché': Gowers 2012: 261.

³ Translations of Lucilius, while my own, are based on those in Warmington 1938.

⁴ It has been recognised since Porphyrio that Horace, with *sic me servauit Apollo* ('in this way Apollo saved me', *Sat.* 1.9.78), offers a sly riposte to a Lucilian version: <nil> *ut discrepet ac τὸν δ' ἐξήπαξεν Ἀπόλλων | fiat* (267–8 Warmington = 231 Marx).

⁵ Ferriss-Hill 2011 puts the case eloquently.

⁶ So Mazurek 1997, though Cairns 2005 has reservations; the meaning at issue is the import of *antestari* ('serve as a witness', 1.9.76).

⁷ Lowrie 2005 is good on the poem's exploitation of legal discourse.

of consulting an authority could be a small-scale version of the famous ‘Council of the Gods’ in Lucilius Book 1. That scenario portrays a dead consular, Lentulus Lupus, as the defendant of a (show) trial on Olympus.⁸ As I hope to write about that episode elsewhere, my main concern in this chapter will be the contents of Lucilius’ second book. This book of poetry confusingly formed part of a second, multi-volume collection, which contained exclusively hexameter verse.⁹

I focus on Book 2 because it contains a law-court scene between Q. Mucius Scaevola Augur, and an apparently Graecophile adversary, Titus Albucius. This set-piece is memorably invoked by Persius and Juvenal, Lucilius’ and Horace’s successors in verse satire: *sequitur Lucilius urbem, | te Lupe, te Muci, et genuinum fregit in illis* (‘Lucilius ripped into Rome—you, Lupus, you, Mucius—and broke his molar on them’, Pers. 1.114–15); *quid refert dictis ignoscat Mucius an non?* (‘What does it matter whether Mucius [Scaevola] forgives me or not?’, Juv. 1.154).¹⁰ The trial was probably the subject of most of Lucilius Book 2.¹¹ That ‘probably’ is quite important, because we should always remember that we are dealing here with slippery reconstructions of somewhat garbled texts, stemming for the most part from the much later dictionary of Republican Latin words by Nonius Marcellus, whence originate the fragments under discussion here unless otherwise noted. But this is the curse of all who work on fragmentary material, as evidenced throughout this volume: that rash speculation is all too tempting and certainty never forthcoming. Nonetheless, it is to be hoped that, with indulgence having been craved and (perhaps) granted, the reading of the material presented here coheres and convinces.

The representation of forensic rhetoric in Lucilius Book 2 seems to have a basis in fact: the trial of 119 BC was an attempt to prosecute Scaevola on a charge of *repetundae* under the *lex Acilia* (123/22 BC), and related to the defendant’s term as governor of Asia in 121 BC.¹² It is thus of critical importance as we attempt to use this record as a source that we understand the very notion of portraying a trial in verse, and satiric verse at that: issues of fidelity and accuracy are paramount. My argument is that Lucilius’ poetry is a deliberate, if skewed, reflection of

⁸ See Mantovani 2009 for Lupus facing a capital charge; Manuwald 2009 is the best recent treatment of Lucilius Book 1.

⁹ Lucilius’ first collection of verse in mixed metres is traditionally numbered as Books 26 to 30.

¹⁰ Braund 1996: 108 judges the latter quotation to be ‘almost certainly a reworking of lines of Lucilius’.

¹¹ See e.g. the summary of Krenkel 1970a: 1.64–5. Gruen 1992: 290 is wrong to say that Krenkel makes P. Mucius Scaevola Lucilius’ target, even at 1970a: 1.22.

¹² See e.g. Gruen 1968: 112–17; Bauman 1983: 321–9. *TLRR* no. 32 gives the bare bones. Apul. *Apol.* 66 seems not to have understood who was prosecuting whom, despite presumably having access to Lucilius’ full text.

Republican oratorical practice, in particular in its performative nature and the authority of its invective. In the second part of the chapter, I investigate how Lucilius could have been considered an expert in questions of law, and why it is that he was treated as one by Cicero. A literary genre that features heavily in the third section of my argument is tragedy, in particular via Lucilian parody of Pacuvius' intensity of expression, which can be compared to Gracchan oratory. The resemblance has an important bearing on the question of Lucilian style, which Varro claimed was 'graceful', and the opposite of the 'richness' of Pacuvius (see below).¹³ If Lucilius' representation of oratory can be considered as evidence for oratorical practice, its stylistic features can be scrutinised and criticised as prose technique.

Part of the problem in reading Lucilius is that we cannot quite divine how much later his account was written than the events it portrays:¹⁴ in other words, is it old news?¹⁵ While the question may be unanswerable, the presence of what seems to be direct speech, in what may be rhetorical questioning, certainly may give the impression of immediacy, even if that is not the same as 'recentness': *quid dicis? cur est factum quod coicis istuc?* ('What are you saying? Why is it the case that you make that contention?', Lucil. 77 Warmington = 87 Marx). This is preserved by Nonius, who contrives in typical style to get the meaning of *coicere* wrong (he thinks it means 'to steal'). I see this line as related to another use of the verb *co(n)icere* in the Lucilian corpus, namely *conicere in uersus dictum praeconis uolebam / Grani* ('I wanted to throw into verse a remark of the auctioneer Granius', 448–9 Warmington = 411–12 Marx).¹⁶ Hurling is part of the process of versification and the preservation of reported speech, though there is also a sense of ephemerality, emphasised by the haste of the action. Granted, Granius in the second fragment is not necessarily in the law court, but the idea of praise and blame, central to ancient mores, that 'throwing' represents—after all, one throws something at somebody—is also involved here because of the implied distinction between prose and verse. Lucilius (or

¹³ Gell. NA 6.14.6. Svarlien 1989: 261–5 is eloquent on the implications.

¹⁴ A scholiast on Virgil's *Aeneid* reports a line of Lucilius, advertising it as being from Book 2: *fandam atque auditam iterabimus <famam>* ('we will reiterate a story fit to be told and already heard', Lucil. 53 Warmington = 55 Marx); Hass 2007: 70–1 decides on this basis that the satirist's purpose cannot be 'Neues, Aufrüttelndes zur aktuellen Tagespolitik zu verkünden.'

¹⁵ If Lucilius was advertising his own innovation as a writer of satire, it may be significant that this is the first instance we know of where the defendant is charged under a law for which he was at least partly responsible: Bauman 1983: 321.

¹⁶ Morgan 2010: 312–13 is a superb treatment of the Lucilian conceit, although I do not necessarily agree with his assessment that *conicere* represents 'something of an effort' (312).

whoever the speaker is) ‘throws’ to turn prose to verse.¹⁷ Yet another aspect of the discussion is the sense of approval which Lucilius’ appropriation of Granius’ line suggests: praise is commingled with blame. So, to return to 77 Warmington = 87 Marx, *coicis* is pointed and self-involved: not only is the speaker ‘throwing’ out a statement, but Lucilius, by recording this in verse, had also implicitly performed the same action (*conicere in uersus*).

It is interesting that additional fragments assigned to Lucilius Book 2 by Nonius all contain forceful actions, mostly in the present tense:

iniuratum hunc in fauces inuasse animamque / elisise illi

‘That this wrong-doer made for his gullet, winded him and knocked him out’

Lucil. 54–5 Warmington = 57–8 Marx

quae ego nunc huic Aemilio prae- / canto atque exigo et excanto

‘Which I now fore-chant to Aemilius here, which I force out and chant out’

Lucil. 78–9 Warmington = 62–3 Marx

nunc Nomentani quae [nunc in nomen iam, quae Marx] ex testibus ipse rogando / exculpo, haec dicam

‘And now you will hear from me all that I can gouge out of Nomentanus’ witnesses by questioning him myself’¹⁸

Lucil. 80–1 Warmington = 69–70 Marx

All this violence could well reflect the cut and thrust of court repartee, and simultaneously serve as a meta-textual presentation of invective iambic, the genre famous for its aggression and bite.¹⁹ The repetitive emphasis, in the fragment which mentions Aemilius, on *canto* as part of a legal proceeding could even intersect with the nature of the law as a kind of *carmen*.²⁰ Here one may

¹⁷ Horace involves Lucilius in a debate about whether their poetry can be counted as prose (*Sat.* 1.4.38–62).

¹⁸ For Nomentanus, see Rudd 1981: 142, and now Gowers 2012: 80. Note that in this fragment and 82 Warmington = 56 Marx, which appears below, Nomentanus’ presence is only the result of conjecture by Scaliger. See Crawford 2001²: 1.261 on the *denarii* issued by a Roman mint of 141 BC which have NOM in the place of ROMA, and may therefore have been minted for L. Atilius Nomentanus.

¹⁹ It may be noteworthy that Apuleius (*Apol.* 10) and Diomedes (*GLK* 1.485.11–17) call Lucilius a writer of iambic.

²⁰ Meyer 2004: 44; cf. ‘the Roman tendency ... to call them all *carmina*, or sometimes both *carmina* and *leges* at the same time’ (71).

be reminded of Cato's procedure in inventing prose stylistics with a nod to the true Italian *carmen*, through the use of 'paratactical constructions, lexical parallelisms, and phonetic repetitions'.²¹ In turn, we can highlight the metrical presentation of the direct speech of the trial's participants. They are speaking hexameters, which may well be ponderous and portentous (*uersus longi*, in Ennius' phrase),²² but still might be thought to contrast with iambic speech, supposedly the best for representing everyday discourse.²³ In other words, there is a disjunction between the prose original and the verse portrayal, which might lead readers or audiences to question the accuracy of the satiric account. I am reminded of the argument that the cause of Catullus' laughter in his Poem 53 is that the audience member at an impressive legal display by Calvus impetuously utters a correct hendecasyllable as a *bon mot*, '*di magni, salaputium disertum!*' ('Great gods, the learned little salt-cellar', 53.5).²⁴

Now, if the fragments already adduced depict, as I am assuming, one or another of the participants speaking in the course of the trial, then the operative principle is a potentially startling informality. Here are three more phrases which are excerpted from Book 2, according to Nonius, which all contain salacious content:²⁵ *in bulgam penetrare pilosam* ('to penetrate into a hairy bag', 61 Warmington = 73 Marx); *si natibus natricem inpressit crassam et capitatam* ('if he has marked his buttocks with a water-snake, thick and bulge-headed', 62 Warmington = 72 Marx); and *pedicum ... iam excoquit omne* ('by then he burns out all lust for boys', 63 Warmington = 74 Marx). From these it is commonly assumed that Scaevola was also being attacked for pederasty, though the first two of these three fragments may actually refer to Scaevola being passively anally penetrated. But what does this have to do with *repetundae*?²⁶ A softer interpretation is perhaps relevant: it could be (and has been) argued that *natrrix* in 62 Warmington = 72 Marx is actually a whip,²⁷ and there are also Catullan passages which use

²¹ Sciarrino 2011: 124.

²² As cited at Cic. *Leg.* 2.68, cf. Gowers 1993: 55.

²³ Goh 2012-3, with references.

²⁴ Heyworth 2001: 118; on the implication of 'salt purity' in the line's Oscanism *salaputium* for Cat. 53's programmatic status, which could be related to the Lucilian claim to fidelity, see now Hawkins 2012.

²⁵ For discussion, pertinent to this whole paragraph, see Williams 2009: 315-6. On the possibility of a pun on the name of Crassus, Scaevola's son-in-law, in *crassam* ('fat'), as I suggest in forthcoming work, cf. Corbeill 1996: 141, who notes that Cicero never employs that wordplay about a person named Crassus (with a counterexample at 143). Certainly, as Marx 1904-5: 2.36-7 recognizes, there is the possibility that another fragment seen as stemming from this trial (67-9 Warmington = 78-80 Marx), which involves a phallic amulet, may be punning on Scaevola's name, which could mean just that: Varr. *L.L.* 7.97.

²⁶ See Bauman 1983: 323 on the possibility that Scaevola faced charges *de sicariis* as well as *de repetundis*.

²⁷ Adams 1982: 31.

whips figuratively for the act of pressing stylus to papyrus.²⁸ That is exactly what Lucilius is doing in representing this trial. It is certainly unclear whether these fragments form an editorial comment or coarse elaboration from a vantage point beyond the actual trial. Perhaps the language here might be thought too crass for actual utterance in court, though there do not seem to have been any formal restrictions on what could be said, and oratorical performances could have been relatively freewheeling.²⁹

We can compare a brief passage near the ending of Horace's short and politically quite raw *Satire* 1.7:

tum Praenestinus salso multoque fluenti
 expressa arbusto regerit conuicia, durus
 uindemiator et inuictus, cui saepe uiator
 cessisset magna compellans uoce cuculum.³⁰

Hor. *Sat.* 1.7.28–31

Note the presence of *expressus*, again a word implying force as in the Lucilian examples above. Horace, with *cuculus*—which perhaps hides some obscene or even anti-Brutus jokes, given that the Liberator is sitting as umpire in this ‘rich Asian’ (*ditem Asiam*, 1.7.19) setting³¹—essentially reproduces taunts of the same kind as we saw in Lucilius. One of the protagonists, Rupilius Rex (hence the poem's closing joke on his name, ‘king’), is speaking here, and is called *durus* (‘harsh’, 1.7.29), a description linked earlier in this poem to his opponent Persius (1.7.6), and earlier still in this book of Horace's poetry to Lucilius, who was *durus componere uersus* (‘rough in the composition of his verses’, 1.4.8). Hence it is correct to say that Horace ‘consigns to history’ old approaches to invective, while simultaneously ‘displaying his own virtuosity as a writer of mock-heroic courtroom satire’;³² I would surmise that part of Horace's intention in

²⁸ See e.g. on Catull. 25.10–11, Fitzgerald 1995: 101–2; Richlin 1999: 197–8.

²⁹ See e.g. Bablitz 2007: 186–92: ‘Clearly the courts of Rome were, by most modern standards, far less disciplined’ (190). That said, it was all too easy for orators to resemble actors: see e.g. Edwards 1993: 118–19; Fantham 2002; Connolly 2007: 202–3.

³⁰ ‘Then, as his wit comes out in full flow, the man from Praeneste hurls abuse squeezed from the vineyard in return, acting the tough, invincible vine-dresser, to whom the passer-by, taunting him with resounding cries of “Cuckoo”, would often have given in.’ The most influential treatments of this poem are listed at Gowers 2012: 252.

³¹ Gowers 2012: 260–1 for the jokes, 257–8 on Horace's historical specificity (Brutus is named at 1.7.18).

³² Gowers 2012: 250.

Satire 1.7 is a pointed recollection of Lucilius Book 2, the trial in which questions about what happened in Asia were also considered. Now, it has been observed that the charge of *duritia* shows Horace identifying Lucilius with (later) Atticist theories of ‘rugged’ style.³³ But perhaps it is not only Lucilius but the protagonists of the Book 2 trial whose style needs to be judged in this way.

At one point in the trial, it seems that the history of the relationship between Albucius and Scaevola was traced back to another foreign locale:³⁴

‘Graecum te, Albuci, quam Romanum atque Sabinum,
municipem Ponti, Tritani, centurionum,
praeclarorum hominum ac primorum signiferumque,
maluisti dici. Graece ergo praetor Athenis,
id quod maluisti, te, cum ad me accedis, saluto:
“chaere”, inquam, “Tite”. lictores, turma omnis chorusque (cohorsque *Manutius*):
“chaere, Tite”. hinc hostis mi Albucius, hinc inimicus.’³⁵

Lucil. 87–93 Warmington = 88–94 Marx

This is the longest fragment of Lucilius Book 2 (preserved by Cicero’s *de Finibus* 1.8). I just want to observe that the Greek greeting *chaere*,³⁶ which plays into the hands of Scaevola’s presumptive argument that his opponent is not to be trusted because he is exotic and foreign, ironically introduces the foreign language into the law-court scenario. Legal worries are of course a staple of comic authors: one might think of Aristophanes claiming to require defence against legal threats, and the result is an odd vindication of Horace’s infamous statement (*Sat.* 1.4.1–5) that Lucilius owed everything to the Old Comedians, in particular their tradition of ὀνομαστὶ κωμῳδεῖν, blaming by name.

³³ Freudenburg 1993: 153–62.

³⁴ I have treated the cultural identity dynamics of this fragment on a different occasion: Goh 2012–13.

³⁵ ‘Albucius, you have preferred to be called a Greek rather than a Roman and a Sabine, a fellow-townsmen of Pontius and Tritanus, of centurions, of famous and foremost men, and of standard-bearers. Therefore I as praetor greet you at Athens in Greek, when you approach me, as you preferred: “Ciao, Titus”, I said. The attendants, the whole troop and chorus, said “Ciao, Titus”. Since then Albucius has been my foe, that’s why we’re enemies.’

³⁶ See the discussion of Eckert in this volume.

In the fragments of Lucilius Book 2 we certainly have direct address, and in the above passage not only the explicatory ‘Albucius’ but also the deliberately over-familiar ‘Titus’.³⁷ The narrative is also rendered vivid by the present tense of *accedis* and *saluto* (Lucil. 91 Warmington = 92 Marx). Scaevola’s channelling of the voices of ‘the attendants, the whole troop and chorus’ into a repetition of his own utterance is a nice rhetorical technique to lend additional ballast to the all-against-one tenor of the passage. There is actually a good reason for this: Scaevola, unusually, spoke on his own behalf. Cicero—who knew the Augur personally, having been tutored in jurisprudence by him³⁸—judges ‘his oratory adequate for his own defence’ (*pro se opus erat*, *Brut.* 102), even if ‘he was not among the number of orators’ (*is oratorum in numero non fuit*). Clearly, then, this is quite an unusual case—befitting its highlighting by Lucilius.

What of Lucilius’ posturing as a legal expert? We find an appraisal of what Fiske called ‘the boastful *epideixis* of some Greek orator’ in a fragment attributed to Lucilius Book 10 (Donatus, *ad Ter. An.* 324):³⁹ ‘*ne tu in arce bouem descripsi magnifice*,’ inquit (“‘Oh, how magnificently”, said he, “did you describe the bull on the citadel””, Lucil. 412 Warmington = 388 Marx). This adulatory response could have taken place in a courtroom, if Fiske is right. While the phrase concerning the ox may be proverbial, we could make more of the incongruity here: would bulls be what one expects to find in a citadel?⁴⁰ The speaker of the Lucilian line is, in any case, demonstrating their fine judgement. Book 2, for its part, could contain a refusal to report everything that was said in the Scaevola trial: ‘*qui*’ *utinam est, ut Lucilius in II*: “‘*qui te, Nomentane, malum di . . .*’” *ad cetera pergit* (“‘*qui*” means “would that”, for example Lucilius in Book 2: “would that, Nomentanus, you the gods to hell . . .” and he went on to the rest of it’, Lucil. 82 Warmington = 56 Marx). It is unclear from Donatus (*ad Ter. Phorm.* 123), who preserves this fragment, whether the three words after the direct speech breaks off (*ad cetera pergit*) should be considered part of the Lucilian quotation or not. If they do belong to the quotation, then the character of the Lucilian account as a record of what was said becomes even more obvious.

³⁷ Cf. Jones 1989 on a possible sexual slur here, with n. 25 above.

³⁸ Cic. *Amic.* 1, one of the dialogues in which Scaevola appears as an interlocutor. Cf. also Cic. *Brut.* 306.

³⁹ Fiske 1920: 110.

⁴⁰ We can cite here a bull which Pliny the Elder claims was taken from Aegina to Rome (Plin. *HN* 34.10), and—sticking with satire—a reference to sacrifice on the Capitoline in Juvenal (10.66). Certainly Hass 2007: 218 thinks that Lucilius is stressing the need to ‘bei der Wahrheit bleiben.’

Given these gestures towards reportage, I suggest that Lucilius in Book 2 could be thought of as a kind of stenographer, though admittedly, such a role pre-dates the supposed birth of Latin stenography by Tiro or someone else closely associated with Cicero.⁴¹ Even so, Isidore with his ascription of the invention to Ennius would beg to differ, and indeed Cassius Dio plumps for Maecenas;⁴² one could also toy with the idea that Xenophon's recording of Socratic conversations required a form of shorthand.⁴³ Now, the implication of this assumed role is that Lucilius knew about the law, enough to represent it accurately, and technically, at speed: can this be borne out?

A meagre three-word fragment, preserved by the grammarian Charisius (*GLK* 1.82.5) could have been applied to the author himself merely by virtue of being a phrase that appeared in his poetry, the so-called biographical fallacy:⁴⁴ *Lucilius II: ut iure peritus* ('Lucilius in Book 2: "like one skilled in law"', Lucil. 66 Warmington = 81 Marx). The sentiment is reflected in several pronouncements in Cicero's works to the effect that Lucilius possessed strong opinions about the education of orators as well as correct oratorical practice. For instance, the sound advice offered in the voice of Crassus in *De oratore* 1 certainly seems conventional enough:

sed, ut solebat C. Lucilius saepe dicere, homo tibi subiratus, mihi propter eam ipsam causam minus quam uolebat familiaris, sed tamen et doctus et perurbanus, sic sentio neminem esse in oratorum numero habendum, qui non sit omnibus eis artibus, quae sunt libero dignae, perpolitus.⁴⁵

Cic. *De or.* 1.72

⁴¹ Eusebius on Tiro, Cicero's freedman, in his *Chronicon*; cf. Cic. *Att.* 13.32 (SB 305) (διὰ σημείων *scripseram*, 'I had written by means of code'), with Plut. *Cat. Min.* 23–5 (who thinks it was Cicero's doing, 5th December 63).

⁴² Isidore *Orig.* 1.22 claims that Ennius *primus inuenit* ('first discovered') the practice; cf. Cass. Dio 55.7 for Maecenas, though the list seems as though it is merely a roster of famous people.

⁴³ Diog. Laert. 2.48 uses the slightly ambiguous phrase ὑποσημειωσάμενος τὰ λεγόμενα, 'interpreting his sayings', on which see e.g. Enos 2002: 85. This may have a certain bearing on the existence of 'Socratic pages': what Lucilius calls *Socratici carti* (788 Warmington = 709 Marx), and Horace will later call *Socraticae chartae* (*Ars P.* 310). See Brink 1971: 339; cf. also Prop. 2.34b.27. Lévy 2012: 305 calls Horace's usage 'probably a generic word to designate Academic, Peripatetic and Stoic practical philosophy.'

⁴⁴ Cf. e.g. Crane 1993: 54: 'humanist education concerns itself with the supplementation of the speaking self by carefully chosen fragments of text'; Heller 1997: 40–1: 'the conflation of this speaking subject with the implicit author (the image of the author derived from the text at hand) and the public image of the "real" author, is not [unusual]. In fact, in much poetry . . . the reader is led to assume a quasi identity of these subjects'.

⁴⁵ 'But, as Gaius Lucilius used frequently to say (a man not very friendly to you, and on that account less familiar with me than he could wish, but a man of learning and good breeding), I am of this opinion, that no one is to be numbered among orators who is not thoroughly accomplished in all branches of knowledge requisite for a man of good breeding.'

Crassus was the accused Scaevola's son-in-law, and Cicero gives him another passage later in the dialogue with commentary on Lucilius' methods:

in quo lepide soceri mei persona lusit is, qui elegantissime id facere potuit, Lucilius: 'quam lepide lexeis compostae! ut tesserulae omnes arte pauimento atque emblemate uermiculato.' (Lucil. 84–5 Warmington = 84–5 Marx) quae cum dixisset in Albucium inludens, ne a me quidem abstinuit: Crassum habeo generum, ne rhetoricoterus tu sis. (Lucil. 86 Warmington = 86 Marx) quid ergo? iste Crassus, quoniam eius abuteris nomine, quid efficit? illud quidem; scilicet, ut ille uult et ego uellem, melius aliquanto quam Albucius: uerum in me quidem lusit ille, ut solet.⁴⁶

Cic. *De or.* 3.171

Of some importance here is the reappearance of Greek, *rheticoterus*, presumably aimed against Albucius. One implication is that being overly rhetorical is unappealing. This complicates the picture of the satirist as orator or court reporter, a picture aided by Horace's tendentious pronouncement in *Satire* 1.4 that the poetry he and Lucilius wrote is 'all prose', *sermo*.⁴⁷ But now we can expand on the particular ironies of the trial being one involving a philhellene and Epicurean, Albucius, who was therefore 'ill-suited to public speaking' (*minime aptum ad dicendum genus*, Cic. *Brut.* 131): for Scaevola had been in his youth an adherent of Panaetius (Cic. *De or.* 1.45), and his Stoicism was famous, as Posidonius reported (Ath. 6.274c–e).⁴⁸ When he was praetor at Rhodes in 120, Scaevola had debated the teachings of Panaetius with Apollonius—not all that long before the date of this trial.⁴⁹ One of the other 'only true Roman

⁴⁶ 'In reference to which qualities of style, the poet Lucilius, who could do so most elegantly, has expressed himself wittily and sportively in the character of my father-in-law: "How elegantly are his words arranged! All like square stones inserted skilfully in a mosaic pavement with wavy inlay!" And after saying this in ridicule of Albucius, he does not refrain from touching on me: "I've Crassus for a son-in-law, lest you be too much *l'orateur*." What then? This Crassus, of whose name you, Lucilius, make such free use, what does he attempt? The very same thing indeed as Scaevola wished, and as I would wish, but with somewhat better effect than Albucius. But Lucilius spoke jestingly with regard to me, according to his custom.'

⁴⁷ Hor. *Sat.* 1.4.40–2: . . . *neque enim concludere uersum / dixeris esse satis; neque si qui scribat uti nos / sermioni propiora, putes hunc esse poetam* ('For you would not say that it is enough to round off a verse; nor, if someone were to write, as I do, lines more befitting prose, would you think them to be a poet'). See Oberhelman and Armstrong 1995 for some of the complexities here.

⁴⁸ Hence Gruen 1992: 307 thinks of Lucilius Book 2 as a 'puncturing of pretension'.

⁴⁹ Cic. *De or.* 1.75 (see also 3.68).

Stoics' named by Posidonius is Rutilius Rufus, with a name suspiciously similar to the Rupilius Rex of Horace's *Satire* 1.7;⁵⁰ Rufus lost an extortion trial similar to the one depicted in Lucilius Book 2, concerning his time as a legate in Asia assisting a different Q. Mucius Scaevola.⁵¹ If Rufus' Stoicism prevented him also from speaking well,⁵² then the same might have been true of Scaevola Augur. Certainly, Cicero talks up Scaevola's excellent learning in civil law and every kind of wisdom (*iuris ciuilis intellegentia atque omni prudentiae genere praestitit*, *Brut.* 102); however, it is telling that Scaevola is made by Cicero to give at least one speech abjuring oratory, using prominent Romans from Romulus down as examples, and thus disavowing, to some extent, his own past.⁵³

We might ask how it was that Lucilius received privileged access to the trial of Scaevola, if he was playing the role of reportage. No politician or jobbing advocate he, and no real friend of Scaevola's either, if we believe Crassus in Cicero. Certainly, Lucilius seems to mix in legal circles; the statement as reported by Pliny that he wanted to be read by the jurist Junius Congus would seem to suggest as much: *nec doctissimis. Persiumue haec legere nolo, Iunium Congum uolo. quod si hoc Lucilius, qui primus condidit stili nasum* ('Not by the very learned—I do not want Persius to read these things, I want Junius Congus to—that's what Lucilius said, who first had a nose for style', Plin. *HN* pr.7, hence Lucil. 633–4 Warmington = 595–6 Marx).⁵⁴ This of course requires us to assume that Congus was selected as much for his legal acumen or advice as for his social status.⁵⁵ And yet Lucilian recourse to the law seems distinctly fallible: infamously, where Accius succeeded, he was unable to win a case against slander from the stage. Now, I do not necessarily agree that Lucilius subsequently wrote Book 2 to get his own back against P.

⁵⁰ On Rutilius as also a pupil (like Scaevola Augur and Posidonius) of Panaetius, cf. Cic. *Off.* 3.10.

⁵¹ See *TLRR* no. 94; the law under which he was prosecuted was the *lex Servilia*.

⁵² On Stoic oratory, see first Atherton 1988; cf. Krostenko 2001: 135–9, although I do not fully agree with the subsequent discussion of Terence as influenced by Stoic rhetoric; Wildberger 2013 addresses the bias against their stylistics, and fingers Cicero as at least a partial culprit (271–5). Cic. *Brut.* 113–15 is especially uncomplimentary about Rutilius' speechmaking.

⁵³ Cic. *De or.* 1.35–40, cf. 1.105. I limit this ('to some extent') because at 1.41–44 Scaevola is made to go on by pressing the claims of philosophical rhetoric (note 'our friends the Stoics', 1.43). It is interesting that Cicero seems to want to qualify the harshness of the speech: 'with courtesy, as was his custom' (*comiter, ut solebat*, 1.35)! Cf. Ferrary 1988: 399 n. 13, who casts doubt on Scaevola's closeness to Panaetius.

⁵⁴ Morgan 1992 observes how the quotation of Lucilius in Pliny, which I have simplified here, was mangled by copyists, and proposes the sensible emendation *stili nasuti uersum* to make sense of *stili nasum*, which has a bearing on my argument about Lucilius' rhetorical style.

⁵⁵ Let alone his antiquarian tendencies, as evidenced by his *de Potestatibus*, on which see Sehlmeier 2003: 164–7 (with 160 and Moatti 1997: 137–41 on 'die methodische Gemeinsamkeit von Antiquaren und Juristen'). Hass 2007: 97 claims it is because Congus—and Decimus Laelius, in another version of the fragment—are 'durchschnittlich Gebildeten; Leute wie Lucilius selbst'.

Mucius Scaevola, Scaevola Augur's cousin,⁵⁶ who as judge upheld Accius' successful prosecution of the actor who libelled him.⁵⁷

item: <C.> Caelius iudex absoluit iniuriarum eum, qui Lucilium poetam in scaena nominatim laeserat, P. Mucius eum, qui L. Accium poetam nominauerat, condemnauit.⁵⁸

Rhet. Her. 2.19.5

But the story of the lost court case, for what it is worth, makes us pause before we surmise that Lucilius was entirely comfortable in legal surroundings.

Yet there is a good reason for Lucilius the *equus* to have been at and to have commented upon Scaevola's trial. In yet another first, the event corresponds chronologically with the first official appearances of Gaius Marius as tribune,⁵⁹ with whom Scaevola Augur would remain relatively close. Marius and to a certain extent the Metelli, jostling for influence at this time, were involved in a coalition partnership with *equites*, and it is incontrovertible that 'Scaevola owed his acquittal to the equestrian jurors'.⁶⁰ So it seems not unreasonable that Lucilius is commenting upon—or even egging on?—the jurors, *equites* like him, their behaviour during the trial, their deliberations, and their eventual decision. He may even have been among their number. Perhaps Lucilius Book 2 has didactic intent, offering oblique commentary on the hint of special pleading in this case, which might be expected for an extortion trial dealing with the possibility of dodgy financial interests in Asia, a province in which equestrians were heavily involved.⁶¹

⁵⁶ For this argument see Barr 1965. Bauman 1983: 242–4 discusses the Accian trial and is scornful (at 243 n. 128) about Barr.

⁵⁷ Cf. Raschke 1987: 312 n. 50 using Astin 1967: 228 against the view of Cichorius 1908: 149 n. 1 that P. Mucius is the senatorial addressee of Lucil. 772 Warmington = 690 Marx.

⁵⁸ 'Again, Gaius Caelius, sitting in judgement, acquitted of the charge of injury the man who had by name attacked the poet Lucilius on the stage, while Publius Mucius condemned the man who had specifically named the poet Lucius Accius.'

⁵⁹ Bauman 1983: 327.

⁶⁰ Bauman 1983: 328. Marius was likely from an equestrian family himself (see Vell. Pat. 2.11.1, Val. Max. 8.15.7), despite e.g. Tac. *Hist.* 2.38.

⁶¹ Cf. the famous Book 26 fragment of Lucilius which claims that he does not want to go to Asia to be a tax-farmer (650–1 Warmington = 671–2 Marx). Rawson 1985: 90 notes (using Cic. *Balb.* 45) that Scaevola Augur had good relations with another group of 'persons lower down the social scale with much legal knowledge': the '*praediatore*s, who bought up real estate sold by the state after confiscation'—again it is land ownership at stake. Kallet-Marx 1995: 139 claims that 'we have no evidence that his brush with the *repetundae* court was due to difficulties encountered with the *publicani*.'

Servius (ad *Aen.* 9.573) for his part seems to think that at some point Lucilius did play a more than incidental teaching role regarding oratory, explaining the technical terms *schema* and *climax* (though this fragment is not assigned by editors to Book 2):⁶²

ut ait Lucilius—bonum schema est quotiens sensus uariatur in iteratione uerborum, et in fine positus sequentis fit exordium; qui appellatur ‘climax’.⁶³

Lucil. 416 Warmington = 1133 Marx

We do not know precisely what or how much Lucilius said about technicalities, and of course the intersection of literary criticism with oratorical education rather muddies the waters.⁶⁴ Still, it seems that the attention to word positioning here is relatively specific. Another intriguing detail from Crassus in *De oratore* is the quotation of Lucilius’ *rhetoricoterus tu*, where the *s* drops out in apocope; Cicero elsewhere ‘considers this an archaism but finds [it] acceptable in verse’,⁶⁵ but where does the quotation of the verse in the context of a paragraph considering oratory fit in? Does it count as an example for rhetorical instruction or not?⁶⁶

There is, I would argue, a competitive element here engaging with another, even more stylized form of rhetorical performance: tragedy. In other books, Lucilius mocks the florid style of Pacuvius, with his high-flown diction and rhetorical set-pieces. The one instance where the playwright is named implies an emphasis on clarity: *uerum tristis contorto aliquo ex Pacuuiano exordio* (‘but a gloomy fellow from some tangled prologue of Pacuvius’, Lucil. 879 Warmington = 875 Marx). It may be that what is most egregious about Pacuvian practice is the lack of clear exegesis in the prologue of a play; after all, another fragment of Lucilius, preserved by the scholiast on Juvenal 3.175 (on *exodium*), emphasises critical judgement on structure: *principio exitus dignus / exodiumque sequatur* (‘Let an ending and afterpiece follow worthy of the beginning’, Lucil. 414–5 Warmington = 1264–5 Marx).⁶⁷ But this relative value placed on

⁶² Cf. Rosen 2007: 222 on the ‘fundamental didactic and moral claims’ of satire; Hass 2007: 195 notes Lucilius’ emphasis on ‘Rhetorik, Stil und korrekter Grammatik’.

⁶³ ‘As Lucilius says, a “good figure” comes whenever any sense is altered in repetition of words, and being put at the end of a clause is also the beginning of the next; this is called a “climax”.’

⁶⁴ On Lucilian oratorical education, see e.g. Fiske 1920: 109 on the passage quoted above at n. 46.

⁶⁵ Mankin 2011: 262.

⁶⁶ Cf. Quint. *Inst.* 1.8.11, who includes Lucilius among the Latin authors quoted by late Republican orators such as Cicero and Asinius Pollio in their *speeches*: ‘inserted not merely to show the speaker’s learning, but to please his hearers as well, since the charms of poetry provide a pleasant relief from the severity of forensic eloquence’.

⁶⁷ Hass 2007: 232 n. 302 is, it seems, ambivalent about the ironic value of this statement.

orderliness gives the lie to the apparent bricolage effect of note-taking on the hoof, to which my earlier claims about stenography and informality seemed to point. It is unclear whether the sadness associated with Pacuvius stems from the character's appearance in a tragedy per se or from some other reason. But given Pacuvius' notorious innovations in plot, especially his tendency to explore less familiar parts of myths,⁶⁸ we can surmise that these prologues contained explicatory sections.⁶⁹ In other words, this brings them close to their generic opposite, the prologues of Terence's comedies, themselves highly rhetorical.⁷⁰

Pacuvius' fondness for melodrama and sentimentality may be relevant to Lucilius Book 2 because the charge against Scaevola was not limited to extortion. One of the details, that two of the governor's associates seem to have exhumed a man buried alive in a feigned funeral in order to exonerate their boss, smacks of the games of mistaken identity found in Pacuvius' plots.⁷¹

quom illi uidissent Hortensius Postumiusque
ceteri item in capulo hunc non esse aliumque cubare,⁷²

...

Lucil. 73–4 Warmington = 60–1 Marx

Such hijinks in Asia are germane to Pacuvius' exuberant inventiveness regarding mythological derring-do in exotic climes.⁷³ And the co-opting of underlings to get Scaevola acquitted may have continued in the trial, if we are to believe Cicero: the account books of the quaestor Albius were brought as evidence against Scaevola, but despite their discrepancies Albius, an adherent of Scaevola, supposedly rejoiced at his acquittal.⁷⁴ Granius the herald is said by Cicero to have mocked (*obiurgauit*) Albius for this sycophancy—and, given that it was this character whose sayings Lucilius 'threw into verse', it is quite likely that the mockery was reported by Lucilius. I

⁶⁸ See Fantham 2003: 102–3.

⁶⁹ Manuwald 2011: 213, with a fuller version at Manuwald 2001: 159–60.

⁷⁰ See e.g. Sharrock 2009: 83–7 on Terence's prologues styled as forensic oratory; cf. Goldberg 2005: 122–30 on the divergences between tragedy as 'something seen and something read' (128).

⁷¹ Cichorius 1908: 242–4 has an engaging reconstruction.

⁷² 'When they, Hortensius and Postumius, and the others similarly had seen that it was this man, not another, who lay there in the coffin . . .'. It is perhaps a stretch too far to suggest that Lucilius' 'wavy inlay' (85 Warmington = 85 Marx) refers to this scene, via its literal vocabulary (*uermiculato*, literally 'wormlike'), to imply decomposition and reflect the degradation of moral standards.

⁷³ Boyle 2006: 87–100, esp. 91, and 'exotic stage-settings' (94).

⁷⁴ Cic. *De or.* 2.281, with Gruen 1968: 115–16. Bauman 1983: 324 notes that, additionally, the trial's presiding praetor was probably 'not unfriendly to the accused.'

wonder whether Granius' occupation of *praeco* was assimilated, in this putative account, to the herald's role in tragedy. Even if not, the *grand Guignol* element of Pacuvian stagecraft often leads to a *dénouement* which ends happily:⁷⁵ this leads one to question whether Lucilius deemed Scaevola's trial to have ended appropriately.

The historical question may be bound up with a stylistic one. The term *dignus* in Lucil. 414–5 Warmington = 1264–5 Marx, as quoted above, speaks to the principle of accurate representation around which I have been circling. That statement, whoever uttered it, suggests that there is something worth living up to, an appropriate behaviour—and, bearing in mind that the original context of the line may not have had anything to do with forensic rhetoric, the literary-critical value judgement could be applied to Lucilius Book 2, where the satirist is, by reporting the trial, acting as judge, jury, and executioner (of reputations; not that Scaevola's necessarily suffered, given that he became consul in 117 BC). There is a tension, too, in the very fact that Lucilian satire is, by the time of Lucilius Book 2, standardized as hexameter. The resulting paradox is that the low genre which has twisted the hexameter to its own purposes is not only more fitting and decorous—metrically speaking—than tragedy,⁷⁶ but also more decorous than emotional rhetoric, which of course had a kinship with tragedy: witness the famous Medea-inspired lines of Gaius Gracchus, as quoted by Cicero (*De or.* 3.214), *quo me miser conferam? quo uertam? in Capitoliumne? at fratris sanguine madet* ('Where shall I, miserable, direct myself? Where shall I turn? To the Capitol? But it is soaked with the blood of my brother').⁷⁷

Scaevola Augur's trial was surely a less public occasion than the outburst of Gracchus, which leads us back again to the question of Lucilius' aim in presenting his record of it. Is he playing a celebratory or popularising role, performing what he describes as the announcing function of the trumpets in the one fragment (not in Book 2) that mentions the very Roman

⁷⁵ One element of such endings is marriage, and this may well have come up in Lucilius Book 2: Scaevola Augur's daughter had recently married Crassus, as Lucil. 86 Warmington = 86 Marx (above at n. 47) seems to imply: see Gruen 1964: 104, although Marx 1904–5: 2.40 is meant there.

⁷⁶ On Cicero's use and approval of Pacuvius as example of Roman tragedy's dramatization of emotional control at *Tusc.* 2.48–50, see Caston 2015: 135–9.

⁷⁷ For the allusion pertaining to Euripides' not Ennius' *Medea*, see Albrecht 1989: 49. Sciarrino 2007: 60–4 is a judicious discussion; note that the lines are quoted by Crassus, and respond to his father-in-law Scaevola Augur's condemnation of the Gracchan misuse of eloquence at *De or.* 1.38. Goldberg 2005: 135–6 plays down the theatricality of the recollection; Ennius' *Medea* will feature in a letter Cicero writes to Trebatius Testa (*Fam.* 7.6 [SB 27]), years before he appears in the dramatic scenario of Horace's *Satire* 2.1.

institution of the *contio*:⁷⁸ *rauco contionem sonitu et curuis cogant cornibus* ('Let them bring together a public meeting with the hoarse blare of twisted horns', Lucil. 732 Warmington = 605 Marx)? The stress on curvature may have a Pacuvian slant:⁷⁹ another appearance of the playwright in Lucilius' fragments occurs when a celebrated description of dolphins, from the play *Teucer*,⁸⁰ is rephrased by the satirist, such that *Nerei repandirostrum incuruicercum pecus* ('the herd of Nereus with their splayed noses and curved necks', Pacuv. 238 Schierl) becomes *lasciuire pecus nasi rostrique repandum* ('that the herd with the splayed snout noses play around', Lucil. 235 Warmington = 212 Marx).⁸¹ It is perhaps not coincidental that at least one of the cast of minor characters in the Book 2 trial may be described as 'bow-legged' in a picture of abjection: *Hostilius contra / pestem permitiemque catax quam et Manlius nobis* ('on the other hand, the disease and ruin which Hostilius and limping Manlius are trying to bring upon us', Lucil. 71–2 Warmington = 76–7 Marx).⁸²

It is clear, then, that Lucilius' account of the trial of Scaevola Augur is worth studying as an example of now-fragmentary oratory in the tumultuous post-Gracchan period.⁸³ I have explored reasons for Lucilius' presence in the courtroom, and mulled over some apparent oddities of the trial, including its affinities with drama. But my final point stems from the re-evaluation of the stylistic questions which are at the fore in this forensic episode. The judgement of Varro as preserved by Gellius, alluded to above, was that Pacuvius' style could be associated with amplitude—the grand style—whereas Lucilius' is graceful (*gracilis*)—the plain style (*genus tenue*). Now, it so happens that in the same passage in Gellius, philosophers from the infamous

⁷⁸ Plaut. *Pseud.* 126: *pube praesenti in contione, omni poplo*, 'with the youths present in the assembly, the whole populace.' Cf. Morstein-Marx 2004: 34: 'The Republican *contio* or public meeting had a well-defined place within a great complex of traditional political practices (Rome had no written constitution) and further *took* place in specific central locations in the city of Rome which, with their familiar monuments and historical associations, drew it into a symbolic context as well as a distinctive urban milieu' (italics in original).

⁷⁹ The fragment is compared in effect to the spectacle of tragedy by Manuwald 2001: 157–8; cf. Bagordo 2001: 27–9 on it as a piece of tragic parody (but not in the Callimachean vein).

⁸⁰ Manuwald 2003: 120–2; Schierl 2006: 30.

⁸¹ I am following Marx's text here. The seriousness of Lucilius' parody is an open question, and it could be affectionate in view of some of the neologisms elsewhere: Krenkel 1970b: 195 n. 155 seems to be leaning this way; so, too, Halla-aho & Kruschwitz 2010: 130–1.

⁸² Some scholars read *catax* as a proper noun, e.g. Cichorius 1908: 249–50. Bauman 1983: 325–6 does sterling detective work on the identity of Hostilius.

⁸³ It is unlikely that Gruen 1968: 113–15 is right to be even mutedly enthusiastic about Gracchan sympathies for Scaevola; see Bauman 1983: 314–20 (conclusion: 'probably not a Gracchan'), and the *mea culpa* of Gruen 1992: 291 n. 107. Olshausen 2001: 172 depends (like Gruen 1968) too much on Scaevola Augur's relative P. Mucius; Hass 2007: 70 swallows the claim, though it is consigned to a footnote. That said, Junius Congus mentioned above was identifiable as *Gracchanus*, 'the Gracchan' (Plin. *HN* 33.36): see Rankov 1988, following Cichorius 1908: 123–7.

embassy to Rome in 155 BC are linked with each of the styles, and the one associated with the *genus tenue* is Diogenes the Stoic.⁸⁴ What interests me here is the association of Stoic rhetoric, however arbitrarily, with Lucilius. The satirist I have presented throughout this chapter is lacking in partisan fervour, making jibes at both sides in the Book 2 trial.⁸⁵ Not only could this be thought of as *ieiunia* ('spareness')—the fatal flaw of the Stoic orator in Varro and Gellius' reading—but it associates Lucilius with at least one of his targets: Scaevola Augur, the pupil of Panaetius. Scaevola only gained high office in the Republic at an advanced age, and it is perhaps the case that a reminiscence of this late arrival lingers in Horace's judgement on Lucilius: that his jottings disclose the life experiences of an old man (*uita senis*, *Sat.* 2.1.34).⁸⁶ If Lucilius is implicated in his own account, it would not be out of keeping with the position of self-mockery habitually adopted by satiric writers.⁸⁷ In keeping with that stance, it is unsurprising that a fragment of Book 2 contains the intimation of a dire punishment:⁸⁸ *non dico 'uincat licet'; et uagus exul et erret exlex* ('I do not say "let him win his case"; no, let him be an exiled vagabond and an outlawed wanderer', Lucil. 64–5 Warmington = 82–3 Marx). Yet, interestingly, this was not a valid outcome of Scaevola's trial under the *lex repetundarum*, which carried only a financial penalty.⁸⁹ The wordplay involving the term *exlex*, interpreted by some as a marker (again) of tragic parody,⁹⁰ therefore highlights a reference to the poet's own place on the margins of the acceptable, the satirist's curse of intense relevance to current events matched by the possibility of personal danger. It is in this way that legal rhetoric has been refracted through, if not warped by, the rough and broken glass of Lucilian satire.

⁸⁴ See e.g. Wildberger 2013: 269–70 on the stereotyping here.

⁸⁵ Gruen 1992: 291. I am glad to find support for the judgement of Lucilius as a poet more of variety than anger in Keane 2015: 41.

⁸⁶ Harrison 1987: 47 (cf. also 44 n. 30 on *Hor. Sat.* 2.1.30–4: 'the whole passage has a Stoic cast'). If Lucilius was born in 180 BC, as is generally accepted by scholars, then he would be older than Scaevola Augur (born c. 159 BC); even if the revised date of Mariotti et al. 1968 is accepted (168/7 BC), then he is still old. Cameron 1995: 174–81 establishes that old age in antiquity could still be relative youth by modern standards, see on this the careful discussion of Parkin 2003: 21–2. Herbert-Brown 1999: 142–3 persuasively analyses the Horatian reference as the culmination of her case that Jerome was right about Lucilius being 45 when he died, in which case, he was quite young at the time of the Augur's trial.

⁸⁷ Rosen 2007: 242: 'itself a common gesture of comic abjection', in discussing how in Juvenal 5 and 9 the satirist 'must at some level become what he attacks' (225, italics in original).

⁸⁸ I adopt *exul et erret*, the reading of Leo 1906: 844–5, for the manuscript *exulet erret*.

⁸⁹ Bauman 1983: 324.

⁹⁰ This time of Accius: Hass 2007: 219.

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